

COMPARISON OF CHAPTER 48.977 AND CHAPTER 880 GUARDIANSHIPS

Section 48.977 guardianships were created as an alternative to Chapter 880 guardianships to address the issue of permanency for children who had been adjudicated children in need of protection or services under s. 48.13, Stats, or juveniles in need of protection or services under s. 938.13(4), Stats. and placed in out of home care. Section 48.977 guardianships specifically require the court to find, before granting the petition, that it is likely that the guardian will be fit and willing to be the child's guardian until the child is an adult, or at least for an "extended period of time," and that the child will want the person to be his or her guardian until the child is an adult, or at least for an "extended period of time". There is no durational requirement for Chapter 880 guardianships.

The Section 48.977 standard requiring that the person be "fit and willing" reflects the concern that the proposed guardian be physically able to complete their responsibilities as guardian for the child. Chapter 48 guardianships involve a physical care giving role. In contrast, Chapter 880 guardianships, may involve physical care of the child but do not require it.

In addition Section 48.977 guardianships explicitly recognize that the child at issue was adjudicated a child in need of protection or services, require the court to accept into evidence the child's permanency plan, if available, or CHIPS/JIPS disposition report, and requires the child welfare agency to file as much information with the court as is reasonably ascertainable about the guardianship.

Provision	Chapter 48.977	Chapter 880
Target population	Minors who are adjudicated children in need of protection or services under s. 48.13, or juveniles in need of protection or services under 938.13(4) and placed in out of home care s. 48.977(2)	Minor, incompetents and spendthrifts. s. 880.03
Expected length of guardianship	Expectation that the guardianship will last until the child is 18 years old or for an extended period of time.	No specific expectation, can be used for short durations
Who may petition to have guardianship established?	DHFS, county human services or social services agency, licensed child welfare agency, the child, the child's legal custodian or guardian, a person with whom the child is placed and who is nominated to be the guardian, the corporation counsel or district attorney representing the agencies. [s. 48.977(4)]	Any relative, public official or other person. s. 880.07
Who may be a guardian?	Guardian must be a person. Parent(s) may not be guardians.	Must be an individual, except for certain guardians based on incompetence, s. 880.01(3)No other restrictions as long as competent and willing. Guardian may be a parent. [s. 880.09]
Does the child have to live with the guardian?	Yes, at the time guardianship is ordered.	No
Termination of guardianship	Terminated when child turns 18 years old or by order of the court, unless shorter guardianship period is ordered by the court. [s.	Terminated when the child legally marries or when the child turns 18 as long as the child is competent; or when any incompetent regains

	48.977(7)], If the court enters a termination of parental rights order then guardianship ends s. 48.977(7)(e)	competency, by court order or as otherwise removed or discharged by the court. ss. 880.16, 880.251, 880.26, 880.34.
Powers of the guardian	Unless specifically limited by the guardianship order, the guardian has the duty and authority to make important decisions in matters having a permanent effect on the life and development of the child, including the child's general welfare. This includes the authority to consent to marriage, enlistment in the military, medical treatment, and driver's license. The right to represent the child in legal actions, and the right and duty to visit the child and generally the rights and responsibilities of legal custody.	Specific duties as designated by the court. Much greater emphasis placed on fiduciary responsibilities for the ward's estate.
May responsibilities and powers of the guardian be limited?	Yes, by specific order of the court. [s. 48.977(5)(b)]	Allows petitioner to apply for limited guardianship of property, which allows the ward to manage some of his or her own property. [s. 808.37]
Can guardian be removed?	Yes, by order of the court	Yes, by order of the court. Upon petition of the ward if 14 or older for appointment of another guardian if in the child's best interest, for cause, failure to file report with the court or mismanagement of the ward's accounts, guardian moves out of state, becomes incapable or unsuitable.
May child be subsequently adopted?	Yes, but requires grounds for TPR be established, which can be difficult after the CHIPS order is ended.	Yes, but requires grounds for TPR be established.
Background check required?	If receiving Kinship Care, the guardian must undergo a background check. If receiving Subsidized Guardianship payments, must have received a home study as a foster care licensee prior to guardianship including background check. By DHFS policy a caregiver background check must be completed for all proposed guardians who have never had a check completed, or if their background check is over two years old.	Court may request background check or home study on nominated guardian.
Must guardian be licensed?	No for Kinship Care and	No.

	Subsidized Guardianship payments. Yes for foster care payments.	
Ongoing supervision of guardianship	<p>If the CHIPS/JIPS order is ended, then there is no further supervision over the guardian. The court may continue the CHIPS/JIPS order for service reasons, or to continue foster care payments, in which case standard permanency planning requirements may apply under s. 48.38 Stats.</p> <p>For Kinship Care and Subsidized Guardianship payments the agency or Department makes annual contact with family.</p>	<p>Annual accounting report to the court required, must include educational information if the ward is a minor. [s. 880.25]</p> <p>Supervision primarily provided by court, but often initiated by persons with an interest in the minor or the minor's accounts.</p>